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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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MICHAEL REAPE,

Plaintiff,

09 CV 1363 (BMC)(LB)

**FIRST AMENDED
COMPLAINT**

- against -

**PLAINTIFF DEMANDS
A TRIAL BY JURY**

CITY OF NEW YORK, POLICE OFFICER
ALEISANDRO BERRIOS, 79TH PRECINCT,
SHIELD # 29758, POLICE OFFICER MAURICE
FYFFE, 79TH PRECINCT, SHIELD # 27871, and
POLICE OFFICER JOHN DOE, first and last name
fictitious,

Defendants.
-----X

PARTIES, JURISDICTION and VENUE

1. Plaintiff, MICHAEL REAPE, is a 46 year old Black male and is a United States citizen, residing in Kings County.
2. Defendant, City of New York ("NYC"), is a municipality within the State of New York, which includes Kings County. NYC maintains a police department, the New York City Police Department ("NYPD"), which is an agency of the municipality.
3. Upon information and belief, Defendant Police Officer ALEISANDRO BERRIOS, shield number 29758, was at all times relevant hereto a member of the

NYPD assigned to the 79th Precinct. BERRIOS is being sued in both his official and individual capacities.

4. Upon information and belief, Defendant Police Officer MAURICE FYFFE, shield 27871, was at all times relevant hereto a member of the NYPD assigned to the 79th Precinct. FYFFE is being sued in both his official and individual capacities.

5. Upon information and belief, Defendant Police Officer JOHN DOE, first and last name fictitious, was at all times relevant hereto a member of the NYPD assigned to the 79th Precinct and was the partner of BERRIOS. DOE is being sued in both his official and individual capacities.

6. Original jurisdiction of this Court is founded upon 28 U.S.C. §1331, et seq.

7. Venue is properly laid in this District pursuant to 28 U.S.C. §1391(b).

8. A Notice of Claim was timely served upon NYC on June 23, 2008, within ninety days of March 28, 2008, the statutory date of accrual.

9. More than thirty days have passed since the Notice of Claim was served and there has been no resolution of the claim.

10. The instant action is being commenced within one year and ninety days of the date of accrual.

FACTS GIVING RISE TO THE CLAIMS

11. On March 28, 2008, at approximately 1:00 a.m., MR. REAPE was exiting a vehicle when he was approached by officers BERRIOS and DOE.

12. MR. REAPE, who was lawfully on the street and not engaged in any illegal activity, was ordered by the officers to provide them with identification. MR. REAPE provided his identification to the officers which, upon information and belief, was

checked against computer records by officer DOE.

13. DOE informed BERRIOS that MR. REAPE had a warrant for his arrest. As a result, BERRIOS grabbed MR. REAPE'S right wrist and with undue and unnecessary force did twist MR. REAPE's right arm behind his back. BERRIOS placed MR. REAPE's right wrist in a handcuff and then used force to bring his left arm behind his back and apply the handcuff to the left wrist.

14. MR. REAPE immediately told BERRIOS that the cuffs were too tight and requested that they be loosened. MR. REAPE also informed BERRIOS that he suffered by rheumatoid arthritis in his hand and wrist which was contributing to the pain. MR. REAPE's hand are visibly deformed from his condition and nodules are clearly present at the hand and wrist. The request to loosen the handcuffs was ignored.

15. While being transported to the 79th Precinct by BERRIOS and DOE, MR. REAPE repeatedly complained that the handcuffs were too tight and were causing pain. At no time did either BERRIOS or DOE loosen the handcuffs or otherwise provide MR. REAPE with any relief until after he was placed in a holding cell at the precinct.

16. Because of shortness of breath and chest pains, MR. REAPE was transported Woodhull Hospital for treatment and observation. Upon his release, MR. REAPE was handcuffed by FYFFE. MR. REAPE complained to FYFFE that the handcuffs were too tight and causing pain but was told that the handcuffs could not be loosened and was ordered by FYFFE to say nothing more.

17. As a consequence of the force used to place the handcuffs on MR. REAPE, the excessive tightness of the handcuffs on MR. REAPE's wrist and the refusal to loosen the cuffs despite the numerous and repeated complaints, MR. REAPE

suffered injuries to his wrists, including without limitation, a fracture of the scaphoid bone in the right wrist which required and continues to require medical treatment.

FIRST CLAIM

18. Pursuant to Rule 10(c), Plaintiff repeats and realleges each and every allegation of paragraphs 1 through 17 of the Amended Complaint as if incorporated and reiterated herein.

19. The actions of BERRIOS, DOE and FYFFE against Plaintiff, constituted the use of excessive and unnecessary force in the performance of their police duties.

20. By reason thereof, Defendants caused Plaintiff to suffer physical injuries, emotional distress, mental anguish, economic damages and the loss of his constitutional rights.

SECOND CLAIM

21. Pursuant to Rule 10(c), Plaintiff repeats and realleges each and every allegation of paragraphs 1 through 20 of the Amended Complaint as if incorporated and reiterated herein.

22. Defendants BERRIOS, DOE and FYFFE, by using excessive force in the performance of their police duties, violated Plaintiff's rights under the Fourth, Eighth and Fourteenth Amendments of the United States Constitution under color of law.

23. By reason thereof, Defendants violated 42 U.S.C. §1983 and caused Plaintiff to suffer physical injuries, emotional distress, mental anguish and the loss of his constitutional rights.

THIRD CLAIM

24. Pursuant to Rule 10(c), Plaintiff repeats and realleges each and every allegation of paragraphs 1 through 23 of the Complaint as if incorporated and reiterated herein.

25. NYC and the NYPD had a duty to competently and sufficiently train the individual Defendants in the protection of the constitutional rights of Plaintiff under the Fourteenth Amendment of the United States Constitution and Article 1, §§ 11 and 12 of the Constitution of the State of New York.

26. In addition, NYC and the NYPD had the duty to competently and sufficiently train the individual Defendant officers to conform their conduct to a standard, established by law, for the protection of citizens, such as Plaintiff, against unreasonable risk of harm by conducting themselves in such a manner as not to intentionally, wantonly, and/or negligently inflict injuries to citizens, such as the Plaintiff herein.

27. NYC and the NYPD, its agents, servants and employees, were negligent in failing to afford the individual Defendant officers the proper and special training, supervision and discipline necessary for the arrest and apprehension of civilians, such that the conduct of the individual Defendant officers herein would not occur. Specifically, NYC and NYPD failed: to properly train officers in the proper methods of the use of acceptable, reasonable and limited force to be used when taking civilians into custody. Instead, NYC and the NYPD, have condoned the use of maximal force including unnecessary physical abuse, such as excessive tightening of handcuffs, as a means of establishing control of a person.

28. As a result it has become the pervasive custom and practice of individual police officers and of the NYPD to use under color of law unnecessary force against civilians when making an arrest or securing a person. The individual officers benefit from this practice by establishing their authority and control through the use of terror and pain thereby minimizing their own risk of injury; the NYPD benefits because by allowing such unchecked conduct, its officers are more willing to engage in police activity involving the civilian population.

29. By reason thereof, Defendants violated 42 U.S.C. §1983 and caused Plaintiff to suffer physical injuries, emotional distress, mental anguish and the loss of his constitutional rights.

DEMAND FOR A JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial of all issues capable of being determined by a jury.

WHEREFORE, the Plaintiff demands judgment against Defendants as follows:

- i) On the first claim, actual and punitive damages to be determined at trial;
- ii) On the second claim, actual and punitive damages to be determined at trial;
- iii) On the third claim, actual and punitive damages to be determined at trial;
- iv) Statutory attorney's fees and disbursements pursuant to 42 U.S.C. §1988 together with the costs this action; and
- v) Such other relief as the Court deems just and proper.

Dated: New York, New York
October 21, 2009

Goldberg & Allen, LLP
Attorneys for Plaintiff

By: _____

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